

# European Commission replies to follow-up questions of the European Parliament's Budgetary Control Committee on the appointment of its new Secretary-General – Questions and Answers

Today, Commissioner **Oettinger** in charge of the Budget and Human Resources, in agreement with President **Juncker**, sent the European Commission's replies to the additional questions of the European Parliament's Budgetary Control Committee on the appointment of its new Secretary-General which were received on 28 March. All answers were drafted under the authority of Commissioner Oettinger in agreement with President Juncker, and with the support of the Directorate-General in charge of Human Resources and Security, the Commission's Legal Service and the Cabinet of the President.

These responses, which follow those [already submitted](#) by the European Commission on 24 March, are summarised below.

## **1. Which procedure was followed for the appointment of the Secretary-General, and why?**

The EU's [Staff Regulations](#) adopted by the European Parliament and the Council provide for two alternative ways to appoint a Director-General/Deputy Director-General (in accordance with Annex I to the Staff Regulations graded at either AD15 or AD16). These are: (1) appointment by the College of Commissioners following publication of the post and selection procedure under Article 29 of the Staff Regulations, or (2) transfer in the interest of the service pursuant to Article 7 of the Staff Regulations. Under the latter provision, officials in grades AD15 or AD16 who hold a post or carry out a function at senior management level are eligible for transfer to another position at senior management level in the Commission if this is considered by the College of Commissioners to be in the interest of the service and if they are in the same function group and grade.

In accordance with the Staff Regulations, the **Article 7** procedure – **transfer in the interest of the service** – was used for the appointment of Mr Selmayr as new Secretary-General of the Commission on 21 February 2018. The same procedure had been used for the appointment of the three previous Secretaries-General of the Commission.

## ***Are there different types of Article 7 transfers, and what are the conditions?***

Yes, according to the case-law of the EU courts there are two types of

transfer under Article 7. The first type – known by its French name “*mutation*” – is simply a modality for filling a vacant post following a publication and a selection procedure (Article 4(3) and Article 29(1)(a)(i) of the Staff Regulations). The second type – referred to as “reassignment with the official’s post” or as “autonomous” concept of transfer (Article 7(1) of the Staff Regulations) – does not give rise to a vacancy in the first place, which is why no publication is necessary.

Neither the Staff Regulations nor EU case-law establish any order of preference between the two types of transfer. The appointing authority – in this case, the European Commission – enjoys wide discretion when it comes to organising its departments in the most efficient way. It therefore has a broad discretion to decide in each specific case which type of transfer best ensures the interest of the service, taking account the specific requirements of the post in question.

In the practice of the Commission, both types of transfer are widely used. It should be noted that without the possibility of “autonomous transfers” through Article 7, the Commission’s policy to ensure the mobility of its senior managers could not be implemented.

For both types of Article 7 transfers two conditions must be met: First, they need to be in the *interest of the service* and, second, the post in question must correspond to the official’s grade.

***What does “interest of the service” mean? Is it necessary to first publish a vacancy notice?***

The EU courts have held that the concept of *interest of the service* relates notably to *the smooth running of the institution*. It necessarily entails a case-by-case analysis depending on the circumstances of each case and the specific requirements of the post to be filled.

In this respect, the appointing authority – in this case, the European Commission – enjoys a wide margin of discretion, and neither the Staff Regulations nor the case-law require the publication of a vacancy to fulfil the *interest of the service*. Incidentally, the presence of a “serious and urgent situation” is sufficient – but by no means necessary – to demonstrate an *interest of the service*.

The Commission’s practice is based precisely on these principles. During the mandate of this Commission, roughly half of all appointments (50.6%) at the level of Director-General/Deputy Director-General/*Hors Classe* Adviser were effectively transfers under Article 7 of the type “reassignment with the official’s post”, and therefore without prior publication.

***What constituted such an “interest of the service” in the case of Mr Selmayr’s transfer to the Secretary-General post?***

The Commission decided, using its broad margin of appreciation confirmed by EU case-law, to follow the procedure of “reassignment with the official’s post” without prior publication of the Secretary-General post under Article 7

(see above).

It is considered in the interest of the institution that a position as important as that of the Secretary-General does not fall vacant so as to ensure the full continuity and seamless operation of the European Commission. Since the appointment of Emile Noël in 1958, the Commission's first Secretary-General, the post of the Secretary-General has never been vacant.

The function of Secretary-General is not an ordinary function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission's Rules of Procedure<sup>[1]</sup>, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President. It is for this very reason that the transfer of a senior manager, on the basis of Article 7 of the Staff Regulations, who is well known to and trusted by the President has been common practice for the preceding three decisions of the Commission on the appointment of a Secretary-General of the Commission.

In view of these considerations, it was the clear preference of President Juncker that Mr Italianer stayed on as Secretary-General beyond 1 March 2018 and until the end of the mandate. He and his Head of Cabinet made several attempts to convince Mr Italianer to continue in his function and they did so until mid-February. When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges, notably the multilateral rules-based international order.

Accordingly, the Commission could not allow for any disruption in its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. After having obtained the agreement of Commissioner Oettinger and First Vice-President Timmermans, he subsequently proposed his choice to the College which, taking into consideration the best interest of the service, unanimously decided on the transfer of Mr Selmayr to the position of Secretary-General.

As set out above, there is a second condition for such a "reassignment with the official's post" under Article 7 of the Staff Regulations, i.e., that the post corresponds to the candidate's function group and grade. This condition

was also fulfilled as Mr Selmayr was an official of grade AD15 (since January 2017) with eight years senior management experience in the Commission.

**2. Could Mr Selmayr have been appointed to the position of Secretary-General without having been appointed to the position of Deputy Secretary-General before?**

Yes. As an AD15 official holding a senior management function and with eight years of senior management experience, Mr Selmayr was eligible for the post of Secretary-General and could have been directly transferred by a decision of the College using the Article 7 procedure. In this case, however, he would not have been required to go through a full day Assessment Centre and an interview, as well as an additional assessment and opinion by the Consultative Committee on Appointments.

**3. When did Mr Selmayr know he could become the new Secretary-General? Which were the options considered for Mr Italianer's replacement and when?**

First of all, it is worth recalling that it was the clear preference of President Juncker and his Head of Cabinet that Mr Italianer stayed on as Secretary-General beyond 1 March 2018 and until the end of the mandate. He and his Head of Cabinet made several attempts to convince Mr Italianer to continue in his function and they did so until mid-February.

However, in parallel, the President had an understandable interest in guaranteeing the smooth functioning of the institution, especially in case Mr Italianer decided to retire in March. This is why the possible succession to Mr Italianer was discussed between the President, Mr Selmayr and Mr Italianer repeatedly in the second half of 2017 and in more detail as of early 2018.

A transfer of Mr Selmayr, a senior manager with the required grade and eight years of senior management experience in the Commission and who had the necessary trust of the President, to the position of Secretary-General was one possible option since early 2018. In spite of fulfilling all the formal requirements, this option only became concrete once both First Vice-President Timmermans and Commissioner Oettinger gave their agreement to the President on 20 February 2018 and once Mr Italianer, on 21 February, sent his retirement letter and announced to the College of Commissioners that he would retire as of 31 March.

If Commissioner Oettinger or First Vice-President Timmermans had rejected President Juncker's proposal, he would not have proposed Mr Selmayr to the College as new Secretary-General.

The appointment of the Secretary-General was and remains a decision reserved for the College as the appointing authority. The College of Commissioners unanimously took the decision to appoint Mr Selmayr Secretary-General on 21 February.

**4. Is there a formal difference in the procedure for the appointment of a Secretary-General/Director-General compared with a Deputy Secretary-General/Deputy-Director-General?**

No. According to the Staff Regulations and Commission rules, the procedures for the appointment of a Secretary-General/Director-General and for the appointment of a Deputy Secretary-General/Deputy Director-General are identical. This applies both for appointments following a selection procedure and direct transfers.

[\[1\]](#) Under Article 20(1) of the Commission's Rules of Procedure, the Secretary-General has the legal mandate to "assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that is has set."

The complete answers to the questions as submitted to the European Parliament's Budgetary Control Committee can be found [here](#).

---

## [SMSG comments on the Commission proposals regarding the operation of the ESAs' Stakeholder Groups](#)

[Download PDF](#)

---

## [News story: New requirements for farmers to improve environment for all](#)

New rules are now in force which will protect the water environment and save farmers money.

[The new rules](#), which came in to force on 2 April 2018, mean it is now mandatory for all farmers in England to maintain good practice to protect water quality and prevent water pollution incidents.

Collectively, farming related pollution incidents can harm wildlife in our rivers and seas. They also impact on our economy, resulting in higher bills from increased water treatment and affect our tourism and shellfish industry. Many farmers have already made great progress in addressing pollution risks but the new rules will help tackle water pollution by ensuring all farmers take action.

The rules will:

- promote good practice in managing fertilisers and manures;
- encourage land managers to take reasonable precautions to prevent

diffuse pollution from runoff or soil erosion;

- require land managers to plan each application of manure or fertilisers, based on soil tests, to meet but not exceed crop and soil needs.

Our [25 Year Environment Plan](#) set out how these new rules will require every farmer to identify and manage risks to water and start taking precautions to reduce ammonia emissions, reducing pollution and soil erosion and improving resource efficiency.

Environment Minister Therese Coffey said:

This is a really important opportunity for farmers to reduce pollution in watercourses. In following these rules, farmers will be able to help reduce pollution incidents, improve water quality and save money through more efficient use of resources.

The new rules are an important part of our 25 year plan for the environment which will help us deliver our plans for a Green Brexit and leave our environment in a better state than we inherited it.

The new farming rules have been drawn up with farming and environment representatives so that they are practical, risk based and will prevent and reduce agricultural pollution. They encourage the farmer to think about the risk of water pollution, how to keep valuable topsoil on their fields and to apply fertilisers only when it is appropriate to do so. Farmers and land managers will be able to determine what approach is best for their land, through methods such as deciding when it is safe to spread fertilisers.

The rules cover:

- planning the use of manures and fertilisers to improve soil nutrient levels and meet crop needs;
- storing organic manures and positioning livestock feeders away from water bodies;
- applying manures or fertilisers to minimise impact on the water environment;
- precautions to prevent soil erosion;
- reducing livestock poaching.

Farming rules for water are part of a whole package of measures to help farmers and land managers look after the environment. The government is also investing £400 million through [Countryside Stewardship](#) which supports farmers in creating or restoring precious habitats and a £12 million farm ammonia reduction grant has incentivised farmers to tackle agricultural emissions.

---

## Daily News 04 / 04 / 2018

### **Eurostat: Février 2018 – Le taux de chômage à 8,5% dans la zone euro, à 7,1% dans l'UE28**

Dans la zone euro (ZE19), le taux de chômage corrigé des variations saisonnières s'est établi à 8,5% en février 2018, en baisse par rapport au taux de 8,6% de janvier 2018 et au taux de 9,5% de février 2017. Il s'agit du taux le plus faible enregistré dans la zone euro depuis décembre 2008. Dans l'UE28, le taux de chômage s'est établi à 7,1% en février 2018, en baisse par rapport au taux de 7,2% de janvier 2018 et au taux de 8,0% de février 2017. Il s'agit du taux le plus faible enregistré dans l'UE28 depuis septembre 2008. Un communiqué de presse est disponible [ici](#). (Pour plus d'informations: Christian Wigand – Tel.: +32 229 62253; Sara Soumillion– Tel.: +32 229 67094)

### **Eurostat: Le taux d'inflation annuel de la zone euro en hausse à 1,4%**

Le taux d'inflation annuel de la zone euro est estimé à 1,4% en mars 2018, contre 1,1% en février selon une estimation rapide publiée par Eurostat. S'agissant des principales composantes de l'inflation de la zone euro, alimentation, alcool & tabac devraient connaître le taux annuel le plus élevé en mars (2,2%, comparé à 1,0% en février), suivis de l'énergie (2,0%, comparé à 2,1% en février), des services (1,5%, comparé à 1,3% en février) et des biens industriels hors énergie (0,2%, comparé à 0,6% en février). Un communiqué de presse est disponible [ici](#). (Pour plus d'informations: Christian Spahr – Tel.: + 32 229 50055; Enda McNamara – Tel.: +32 229 64976)

### **Mergers: Commission clears acquisition of the Vita Group by Strategic Value Partners**

The European Commission has approved, under the EU Merger Regulation, the acquisition of Vita Cayman Limited, the ultimate holding company of the Vita Group, of the UK by Strategic Value Partners, LLC of the US. The Vita Group is a pan-European manufacturer and supplier of polyurethane foam, including production of foam and conversion of foam. Strategic Value Partners, LLC is a privately owned investment firm that manages hedge funds and private equity funds, and invests in public and private equity markets, debt markets and other alternative investment markets world-wide. The Commission concluded that the proposed acquisition would raise no competition concerns given the lack of horizontal overlaps and vertical links between the activities of the Vita Group and the other portfolio companies of Strategic Value Partners, LLC. The transaction was examined under the simplified merger review procedure. More information is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8830](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Sarantopoulou – Tel.: +32 229 13740)

## ANNOUNCEMENTS

### **Le commissaire Moscovici en visite à Lyon, France demain**

Pierre **Moscovici**, commissaire pour les affaires économiques et financières, la fiscalité et les douanes, est en visite à Lyon, France, ce jeudi 5 avril dans le cadre de son Tour de France des Régions. Le Commissaire commencera par visiter l'atelier textile « [Fil en Forme](#) » – initiative de l'association pour l'emploi [IDEO](#) – initiative financée par le Fonds social européen qui vise l'insertion de tous dans l'emploi. Ensuite, il visitera aux côtés du président de la Métropole de Lyon le projet urbain « [Société publique locale \(SPL\) Confluence](#) » financé par le FEDER permettant le développement d'un quartier éco-responsable, suivie d'une conférence de presse avec des élus locaux. Il participera ensuite à un dialogue citoyen sur le thème "Une Europe qui protège, vraiment ?" à la Maison des Etudiants avec Sylvie Guillaume, vice-présidente du Parlement européen. Ce dialogue sera [diffusé en direct sur Facebook](#). Enfin, il prendra part aux rencontres de la [fédération française des maisons de l'Europe](#). (Pour plus d'information: Christian Spahr – Tel.: +32 229 50055; Vanessa Mock – Tel.: +32 229 56194; Patrick McCullough – Tel.: +32 229 87183; Enda McNamara – +32 229 64976)

### **Commissioner Stylianides visits Lebanon**

Commissioner for Humanitarian Aid and Crisis Management Christos **Stylianides** is in Lebanon today. He will meet with Lebanese officials: Speaker of Parliament Nabih Berri, Prime Minister Saad Hariri, Social Affairs Minister Pierre Bou Assi and Minister of State for Displaced Affairs Mouin Merhebi. Discussions will be on the relations between the European Union and Lebanon, as well as on the humanitarian situation in Lebanon and the region. He will also discuss ways to assist Lebanon to continue to address the Syrian refugee crisis and how to further support host communities. The Commissioner will also deliver a speech at the opening ceremony of the conference: "Diversity in Unity and Fundamental Freedoms for Christians and Muslims in the Middle East: A Conference for Parliamentary Dialogue" that is held at the Lebanese Parliament. (For more information: Carlos Martin Ruiz de Gordejuela – Tel.: +32 229 65322; Daniel Puglisi – Tel.: +32 229 69140)

[Upcoming events](#) of the European Commission (ex-Top News)

---

**[ESMA finds high degree of asset concentration in EU alternative fund](#)**



# industry

ESMA's latest [Trends, Risks, Vulnerabilities \(TRV\) Report No. 1, 2018](#), also found that the vast majority of European AIFs are managed cross-border using passporting rights.

The ESMA TRV provides first-time EU-wide evidence on the AIF market, based on end-2016 data collected under the Alternative Investment Fund Directive (AIFMD). AIFs include hedge funds, real estate funds, funds-of-funds, and private equity funds.

The AIFMD data shows that 2% of the EU AIF funds are above EUR 1bn in size, holding around 46% of the industry's total net asset value (NAV). On the other hand, around 95% of EU AIFs hold below EUR 500mio (i.e. 40% of total NAV). Two-thirds of the total assets managed by EU AIFMs are divided among the following investment strategies:

- Fixed income fund;
- Equity fund;
- Infrastructure fund;
- Commodity fund; and
- Other fund.

Fixed income AIFs hold the largest share in terms of NAV. The AIFMD data also shows that repurchase agreements serve as AIFs' primary borrowing source, while unsecured borrowing plays only a minor part. In addition, EU hedge funds mainly rely on short-term funding liquidity, with the majority of their borrowings, not committed beyond one day.

The extensive reporting obligations introduced by the AIFMD for AIFs and their managers (AIFMs) allow National Competent Authorities to oversee whether AIFMs are properly addressing micro-prudential risks, and to assess the potential systemic consequences of the individual or collective AIFM activities. By providing a first analysis of the structure and main risks stemming from the AIF market, the ESMA article helps to build an operational framework for monitoring risks in the AIFM sector.

## **Background**

The objective of the AIFMD is to provide an internal market and a harmonised regulatory and supervisory framework for the activities within the EU of all AIFMs.

ESMA's TRV contributes to promoting financial stability and enhancing consumer protection by regularly looking into cross-border and cross-sector trends, risks and vulnerabilities, both at the wholesale and retail level.